

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES GRZESLO,

Plaintiff,

v.

B. SUAZO,

Defendant.

1:21-cv-01371-JLT-EPG (PC)

ORDER DENYING APPLICATION FOR
CERTIFICATE OF APPEALABILITY AS
UNNECESSARY

(ECF No. 72)

Plaintiff James Grzelso is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. On August 21, 2023, the presiding District Judge dismissed this case without prejudice for Plaintiff's failure to comply with court orders and to prosecute this case. (ECF No. 68).

On September 7, 2023, Plaintiff filed a notice of appeal. (ECF No. 70). Additionally, he filed an application for a certificate of appealability (COA), which is now before the Court. (ECF No. 72). The Court will deny the application as unnecessary because a COA is not needed for this civil rights action filed under § 1983. Rather, a COA is required for *habeas* actions. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36, (2003) ("As mandated by federal statute, a state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253. Before an appeal may be entertained, a prisoner who was denied habeas relief in the district court must first seek and obtain a COA from a circuit justice or judge."); 28 U.S.C. § 2253(c)(1)(A) (noting that a COA is needed for habeas actions); Fed. R.

1 App. P. 22(b)(1) (“In a habeas corpus proceeding in which the detention complained of arises
2 from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot
3 take an appeal unless a circuit justice or a circuit or district judge issues a certificate of
4 appealability under 28 U.S.C. § 2253(c).”).

5 Accordingly, IT IS ORDERED that Plaintiff’s application for a certificate of appealability
6 is denied as unnecessary. (ECF No. 72).

7 IT IS SO ORDERED.

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9 Dated: September 8, 2023

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE